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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Parsons, Behle & Latimer  
201 South Main Street, Suite 1800  
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Salt Lake City, UT 84145-0898

EXAMINER

LEWIS, RALPH A

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 10/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/017,454	CAO, DENSEN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ralph A. Lewis	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____   |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> | 6) <input type="checkbox"/> Other:  |

**Rejections based on Obvious-type Double Patenting**

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 2, 4-6 and 10-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-36 of U.S.

Patent No. 6,331,111. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims are obvious variations of those previously patented in 6,331,111. For example, in pending claim 1 all of the limitations are found in patented claim 1 of US 6,331,111, merely setting forth the invention of the patented claim in broader terms (with limitations left out) would have been obvious to one of ordinary skill in the art. In regard to claims 4, 5 and 10-14, the specification of conventional materials would have been obvious to one of ordinary skill in the art. In regard to claims 6 and 19, specifying operation within conventional parameters would have been obvious to the ordinarily skilled artisan.

Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/016,992. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present application are obvious variations of those already set forth in application 10/016,992. More particularly, all the limitations of present claim 1 are found in the pending claims of 10/016,992 (note that the well of claim1, is found in claim 12 of the 10/016,992 application. Merely providing for different versions of the same claimed subject matter would have been obvious to one of ordinary skill in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/017,272. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present application are obvious variations of those already set forth in application 10/017,272. More particularly, all the limitations of present claim 1 are found in pending claim 1 10/017,272 application. Merely providing for different versions of the same claimed subject matter by varying the order of the limitations and setting them forth in varying

degrees of scope is a simple matter of claim construction and would have been obvious to one of ordinary skill in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No. 10/017,455. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the present application are obvious variations of those concurrently set forth in application 10/017,455. More particularly, all the limitations of present claim 1 are found in the pending claims of 10/017,455 (note that the well of claim1, is found in claim 19 of the 10/017,455 application. Merely providing for different versions of the same claimed subject matter would have been obvious to one of ordinary skill in the art.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### **Rejections based on Prior Art**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 and 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mills (WO 99/16136) in view of Doiron et al (5,698,866).

Mills discloses a dental curing light (page 1, second paragraph) comprised of a hand held wand (Figure 5) having a light module 47, an elongated heat sink 45, 50, 51, having a distal end surface serving as a mounting platform on which primary heat sink 48 is mounted and light emitting semiconductors 43 mounted to the primary heat sink 48. In Mills the LEDs are mounted directly on a flat heat sink 48 rather than within wells as claimed. Doiron et al, however, teach that an improvement over mounting diodes on a flat surface (Figures 9 and 10) is mounting them in a well (Figures 11 and 12) formed on the heat sink so that more light from the LEDs is reflected forward in the desired direction. To have mounted the Mills LEDs in wells as taught by Doiron et al so that more light is reflected forward in the desired direction would have been obvious to one of ordinary skill in the art.

In regard to claim 4, Mills does not expressly state how the LEDs 43 are connected to platform 48, however, the use of a conventional prior art adhesives would have been obvious to one of ordinary skill in the art, it is further noted that all adhesives have at least some degree of heat conductivity and light reflectivity. In regard to claims 6 and 19, specifying operation within conventional parameters would have been obvious to the ordinarily skilled artisan. In regard to claims 11-14, semiconductor chips are conventionally made by growing layers upon one another. The limitations of claims 11-

Art Unit: 3732

14 appear conventional to semiconductor chips. In regard to claim 20, note Mills suggests the use of a Peltier device at page 15.

#### **Allowable Subject Matter**

Claims 7-9 would be allowable if rewritten in independent form to include all of the limitations of the claims from which they depend and upon overcoming the obvious-type double patenting rejections above.


#### **Prior Art**

Applicant's information disclosure statement of March 21, 2002 has been considered an initialed copy enclosed herewith.

Adam et al (6,419,483 B1), Boutoussov et al (US 6,439,888 B1) , Fregoso (US 6,611,110 B1), Bianchetti et al (EP 1 090 607 A1) and Reipur (WO 02/33312 A2) are made of record.

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(703) 308-0770**. Fax (703) 872-9302. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (703) 308-2582.

R.Lewis  
September 17, 2003

  
Ralph A. Lewis  
Primary Examiner  
Au3732